IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 701 of 2003
with
CIVIL APPLICATION NO. 2077 OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DY.ENGINEER

Versus

MINOR KALIBEN LALSINHBHAI BHORA

Appearance:
1. First Appeal No. 701 of 2003
MS RV ACHARYA for Petitioner No. 1-3
MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 21/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

Admit. Paper book and printing is dispensed with. Mr. R.N. Shah, learned advocate, waives service of

notice of admission on behalf of the respondent. By consent of the learned counsel appearing in the matter the appeal is fixed for final hearing forthwith.

2. The appellants, original defendants, office of the Gujarat Electricity Board, have filed this appeal challenging the order passed by the learned Third Joint Civil Judge (S.D.), Godhra, dated 24.7.2002 in Special Civil Suit No. 151 of 1999. Ms. Acharya, learned advocate for the appellant, has during hearing, taken us through the judgement under challenge. It is the contention of Ms. Acharya that the learned trial judge has committed error by decreeing the suit of the respondent plaintiff without considering the defence raised by the appellants and such decree passed by the learned trial judge has resulted in miscarriage of justice. She has contended that the finding recorded by the learned trial judge while deciding the issue by holding that minor Kaliben Lalsinhbhai Bhora has sustained injury due to accident with the electrical wire of the defendant Gujarat Electricity Board and further that minor Kaliben has sustained such injury for which the defendants have to pay compensation of Rs. 3,00,000/and while awarding such compensation, according to Ms. Acharya, learned counsel, the plaintiff has failed to prove any case to show that the plaintiff was entitled to such amount as the plaintiff has failed to produce any evidence in the form of receipt or any other documents which entitled the plaintiff for claim of Rs. 3,00,000/-. Lastly, that the trial court has committed an error while granting compensation in favour of the plaintiff by awarding interest at the rate of 12% per annum from the date of the suit as according to Ms. Acharya, interest of 12% per annum is on the higher side.

3. Mr. Shah, learned advocate appearing on behalf of respondent plaintiff, has vehemently urged that the learned trial judge has rightly decreed the suit by awarding a sum of Rs. 3,00,000/- as against claim of the plaintiff for a sum of Rs. 5,55,000/-. He has also taken us through the finding recorded by the learned trial judge. He has also taken us through the observations made by the learned trial judge in respect of the injury sustained by minor Kaliben due to electrocution. However, Mr. Shah has submitted that if the Court inclined to accept the submissions of Ms. Acharya, learned advocate, that the interest awarded while granting compensation in favour of the plaintiff, is on a higher side, the same may be reduced by modifying the decree under challenge to that extent for which he has no objection. In the light of the submissions made

before us and as found from the judgement under challenge that the respondent plaintiff has filed suit against the appellants defendants on the ground that no proper care was taken by the defendants while maintaining the electric lines and minor Kaliben had, due to electrocution, sustained serious injury and suit for damages was filed for recovery of a sum of Rs. 5,55,000/-. As found from the evidence led by the plaintiff, minor Kaliben had remained as indoor patient in the hospital of Dr. Narhari Patel of Dahod from 6.6.1999 to 12.6.1999. After taking treatment at the dispensary of Dr. Patel, she was admitted to Civil Hospital at Dahod and thereafter she was shifted to SSG Hospital, Vadodara. Due to injury sustained by minor Kaliben, her left leg was cut from below the portion of knee and the medical evidence shows that she was treated in respect of injury sustained by her on various parts of her body. Minor Kaliben was at the relevant time of 8 years of age. In the light of the claim put forward by the plaintiff, written statement was filed on behalf of the defendants and in the written statement the defendants have denied the case put forward by the plaintiff and it is the case of the defendants that they have taken proper care and there was no negligence on the part of the defendants. Therefore, they are not required to pay any compensation and further that they are not liable to pay any amount claimed by the plaintiff.

4. The learned trial judge while considering the evidence, recorded the finding that minor Kaliben had sustained injury due to electrocution and further considering the medical evidence in respect of injury sustained by minor Kaliben, the trial Court has decreed the suit by granting a sum of Rs. 3,00,000/- and also awarded interest at the rate of 12% per annum from the date of filing of the suit. As found from the judgement under challenge the plaintiff has claimed different amount on different heads. The plaintiff has claimed Rs. 1 lakh by way of expenses incurred for medical treatment. The learned trial judge has only granted a sum of Rs. 20,000/- as against claim of Rs. 1 lakh. In the light of the decree under challenge, we are of the view that the decree passed by the learned trial judge is based on evidence which is not required to be interfered with. However, in respect of the contention of Ms. Acharya, learned counsel, that the learned trial judge ought not to have awarded interest at the rate of 12% per annum while decreeing the suit as according to her the interest awarded by the trial court is on the higher side. As observed earlier, Mr. Shah, learned advocate for the respondent original plaintiff minor Kaliben has

considered and he has left for us to reduce the interest by modifying the decree to that extent. In the light of the stand taken by Mr. Shah, learned advocate appearing on behalf of the respondent and on considering the interest awarded at the rate of 12% per annum by the learned trial judge while decreeing the suit of the plaintiff, we are of the view that there is some substance in the contention raised by Ms. Acharya that rate of interest is on higher side. Accordingly, the decree under challenge is required to be modified only in respect of that part of the decree and it will be proper to modify the decree by reducing the rate of interest from 12% to 9% per annum. Accordingly, the appeal is partly allowed to that extent. Rest of the judgement of and decree of the learned trial judge deserves to be confirmed. No order as to costs.

In view of the order passed in the main matter, while deciding Civil Application No. 2077 of 2003, it will be fitness of things to direct the appellant to deposit the decretal amount as modified by us within five weeks from today. The Civil Application stands disposed of accordingly.

(D.K. TRIVEDI, J)

(K.M. MEHTA, J)

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